



September 15, 2000

Mr. Michael C. Hayes  
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Attorneys at Law  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR2000-3560

Dear Mr. Hayes:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139332.

The City of Friendswood (the "city") received two requests for information relating to an alleged sexual assault. Both requests provide the identity of the victim of the alleged assault. One of the requestors represents a private facility where the incident in question occurred. The other requestor identifies himself as an attorney for the alleged crime victim. You have submitted a police report that is responsive to these requests. You claim that the responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

As section 552.108 of the Government Code is the more inclusive exception you claim, we will consider it first. Section 552.108, the law enforcement exception, provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects information relating to a closed investigation or prosecution that did not result in a conviction or deferred adjudication. *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory

predecessor to closed cases). In this instance, you explain that the submitted police report pertains to an investigation that the police department closed after a grand jury declined to indict the alleged perpetrator. Based on your representations and our review of the submitted report, we conclude that it concerns a concluded case that did not result in a conviction or a deferred adjudication. Thus, you have demonstrated that the city may withhold the responsive police report from public disclosure under section 552.108(a)(2).<sup>1</sup>

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Ordinarily, section 552.108(c) requires the release of front-page offense and arrest report information, including a detailed description of the alleged offense, even if that information is not literally located on the front page of a corresponding police report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Basic information may be withheld from disclosure only upon a showing of special circumstances.<sup>2</sup>

In this specific instance, we believe that section 552.101 of the Government Code requires the city to withhold the front-page information that otherwise would be subject to disclosure under section 552.108(c). Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses common law privacy and excepts from disclosure private facts about an individual. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common law right of privacy if the information (1) contains highly intimate or embarrassing facts the

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<sup>1</sup>Please note that section 552.108(a)(2) is the applicable exception here, rather than section 552.108(b)(2), which you raise. Section 552.108(b) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. See Open Records Decision No. 636 at 3 (1995); see also Open Records Decision No. 531 at 2 (1989) (endorsing same analysis under statutory predecessor). For examples of internal records and notations that may be excepted from disclosure under section 552.108, see Open Records Decision Nos. 531 (1989) (detailed guidelines regarding a police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1976) (log revealing use of electronic eavesdropping equipment).

<sup>2</sup>We have addressed several special situations in which front-page police report information may be withheld from disclosure. In Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front-page information contained in an arrest report. The police department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. See Open Records Decision No. 366 at 3 (1983); see also Open Records Decision No. 333 at 2 (1982); cf. Open Records Decision Nos. 393 (1983), 339 (1982), 169 at 6-7 (1977), 123 (1976).

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668.

In Open Records Decision No. 393 (1983), this office concluded that although generally only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy, the governmental body was required to withhold the entire police report because the identifying information was inextricably intertwined with other releasable information. See Open Records Decision No. 393 at 2 (1983); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have legitimate interest in such information); Open Records Decision Nos. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld), 339 (1982) (information that would identify victim of aggravated sexual abuse must be withheld). In this particular instance, both requestors apparently know the identity of the victim of the alleged sexual assault. Under these circumstances, we believe that the release of any information about that incident would invade the victim's privacy. Accordingly, we conclude that the basic front-page information about the incident is excepted from public disclosure under section 552.101 in conjunction with common law privacy.

We note, however, that section 552.023 of the Government Code provides a limited special right of access to information that is protected from public disclosure by common law privacy. See Gov't Code § 552.023(a). In this instance, one of the requestors states that the crime victim is his client. If in fact that requestor is the victim's legal representative, then he has a special right of access to private information about his client under section 552.023(a), and the city may not withhold that information from him under section 552.101 in conjunction with the common law right of privacy. See also Open Records Decision No. 481 (1987).

In summary, except for basic information about the alleged crime, the responsive police report is excepted from public disclosure under section 552.108(a)(2) of the Government Code. Basic information that ordinarily would be public under section 552.108(c) also must be withheld from disclosure, in this instance, under section 552.101 in conjunction with common law privacy. The information that is protected under section 552.101 may be released only to a requestor who has a special right of access to that information under section 552.023(a).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

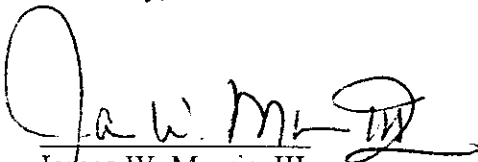
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 139332

Encl. Submitted documents

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